

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

SAINT XAVIER UNIVERSITY¹

Employer

and

Case 13-RC-022025

**ST. XAVIER UNIVERSITY ADJUNCT FACULTY
ORGANIZATION, IEA-NEA**

Petitioner

SUPPLEMENTAL DECISION AND ORDER

The above-captioned matter is before me on remand from the National Labor Relations Board (“Board”). On May 26, 2011, the then Regional Director for Region 13 issued a Decision and Direction of Election. The Employer filed a Request for Review of the Decision to the Board which was granted.²

On December 16, 2014, the Board issued its decision in *Pacific Lutheran University*, 361 NLRB No. 157, revising its standards for declining jurisdiction over faculty members at self-identified religious colleges and universities and determining faculty managerial status. On February 3, 2015, the Board issued an order remanding this proceeding to me for further appropriate action consistent with *Pacific Lutheran*, including reopening the record, if necessary.

Given the Board’s decision that “[a] university’s contemporary presentation is more probative,” *Id.*, slip op. at 6, and since nearly four years had passed since the Regional Director’s initial Decision and Direction of Election, an Order Scheduling Hearing issued to reopen the record to afford both parties the opportunity to submit further evidence.

Therefore, upon the entire record in this proceeding, I make the following findings and conclusions.³

¹ The names of the parties appear as amended at the hearing.

² A mail ballot election was held from June 24 to July 12, 2011 wherein the ballots were impounded on July 13, 2011.

³ Upon the entire record in this proceeding, the undersigned finds:

- a. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and the only issue as stated herein is whether the Supreme Court’s decision in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) precludes the exercise of jurisdiction.
- c. The labor organization involved claims to represent certain employees of the University.

I. Issues and Parties' Positions

Saint Xavier University ("Employer" or "University") is an institution of higher learning with a main campus in Chicago, Illinois and an auxiliary campus in Orland Park, Illinois. The St. Xavier Adjunct Faculty Organization, IEA-NEA ("Petitioner" or "Union") seeks to represent certain employees of the University for the purposes of collective-bargaining. In 2011, the parties stipulated that the following unit is appropriate for the purposes of collective-bargaining:

All part-time faculty employed by the Employer at its campuses presently located at 3700 West 103rd Street, Chicago, Illinois and 18230 Orland Parkway, Orland Park, Illinois, who teach at least three credit hours per semester; but, excluding all part-time faculty members in School of Nursing, all music tutors, all student supervisors in the School of Education, independent contractors, confidential employees and managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Employer employs between 180 to 200 adjuncts, also known as part-time faculty, for the 2014-2015 academic year.⁴

At hearing, on brief, and in its request for review to the Board, the Employer asserted that the Board lacks jurisdiction because it is a religiously operated institution that is not subject to the Act according to the Board's new standard set forth in *Pacific Lutheran*. The Employer further argued the *Pacific Lutheran* test is inappropriate, as it creates the same religious entanglement issues as the Board's previous "substantial religious character" test, and the proper test is the one set forth in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002) and *Carroll College, Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009).

The Employer raised, in the alternative, that certain petitioned-for employees were exempt under *Pacific Lutheran* as they were held out as performing a specific religious function. The Employer raised this particularly with regards to the adjuncts who teach in the Department of Religious Studies, in the Pastoral Ministry Institute, Catholic theology, and those "who participate in religious programming or bring Catholic theology into their classrooms." Therefore, the Employer contends it was precluded from challenging at the election in 2011 a "significant subset" of petitioned-for employees, and the Region should direct a new election.

II. Decision

I have carefully reviewed and considered the record evidence and the arguments of the parties at hearing and in their respective post-hearing briefs.⁵ Based on the entire record in this proceeding and for the reasons set forth below, I find that the University holds itself out as a religious educational environment, but the University failed to establish that it holds out its part-

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- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section (2)(6) and (7) of the Act.

⁴ The terms "adjunct" and "part-time faculty" are used interchangeably throughout the record. For consistency, adjunct will be used in this Decision.

⁵ Both parties timely filed briefs after both hearings in this matter and to the Board.

time faculty, other than the part-time faculty while teaching courses in Pastoral Ministry Institute, as performing a religious function.⁶

III. Statement of Facts

A. Religious Nature of the University

Saint Xavier University⁷ is the oldest of the 16 Mercy colleges and universities in the world and the oldest chartered Roman Catholic educational institution in Chicago. It was founded in 1846 by Mother Francis Warde, RSM (Sisters of Mercy) at the request of William Quarter, the first Roman Catholic Bishop of Chicago. It was chartered by the State of Illinois on February 27, 1847. The 2010 Official Catholic Directory⁸ listed the University as a Catholic institution located within the Archdiocese of Chicago with two priests and five sisters.

As a 501(c)(3) not-for-profit corporation, the University's only corporate member is the corporate arm of the Institute of the Sisters of Mercy of the Americas ("Sisters of Mercy"), known as the Council for Mercy Higher Education.⁹

The current bylaws of the University, most recently amended May 13, 2009, and current articles of incorporation provide that it shall be managed by an independent Board of Trustees numbering no less than 25 and no more than 30, consisting of the President of the University and at least four members of the Sisters of Mercy. In 2011, Sister Susan Sanders, then Vice President of the Office for University Mission and Secretary of the corporation, testified that there were 24 voting trustees at the time, five of whom were Sisters of Mercy and at least 15 were Catholic. The remainder were not identified with any particular religious affiliation.

The bylaws require that "[t]he University actively seeks trustees who represent diverse races, cultures, and religious traditions. In each case, trustees must be committed to the practical implications of the University's Catholic identity and, to the extent possible, the majority of the Board should be Catholics committed to the Church ... Except as herein expressly provided, there shall be no other disqualification either by reason of belief, creed, race, gender or residence from eligibility to serve as trustee." Trustees do not sign any affirmation of their commitment to the University's Catholic identity.

The University maintains an Office of University Mission and Ministry, encompassing the Department of Campus Ministry, Office for Mission and Heritage, Center for Religion and Public Discourse, and several other organizations. According to its webpage, this Office

⁶ According to Employer Exhibit 60, there were no part-time faculty teaching any specific Pastoral Ministry Institute courses (as described in Employer Exhibit 54) at the time the election was conducted.

⁷ Originally founded as Saint Xavier Academy for Women, the Employer opened Saint Xavier College for Women in 1915, became coeducational in 1969, and adopted the title of Saint Xavier University in 1992.

⁸ An updated directory was not introduced as evidence in 2015.

⁹ In 2011, Sister Sanders described the Council for Mercy Higher Education as "the body that's constituted both canonically, in canon law, and civilly, that holds the responsibilities and the reserve powers for the governance of the university ... [it is] the corporate member who links the University to the Church and makes it an officially recognized member of the Church."

“sponsor[s] retreats, service trips, weekly and daily liturgies, special celebrations that mark the passing of the year, and lectures and seminars. And all of these are opportunities to know ourselves and know God better. In fact, we dare say they are opportunities to become more like God.” While these resources are available to students, faculty, staff, and in certain instances the public, attendance at the sponsored programs and events is neither mandatory nor required of students or faculty, including adjuncts. There is no evidence that adjuncts are required to interact with the Office of University Mission and Ministry or its programming as part of their job duties or in any other manner.

B. How the University holds itself out

According to the University’s articles of incorporation, its purpose, among other things, is “to provide and furnish opportunities for all branches of higher education,” “to establish, maintain and conduct a university in which may be taught all branches of higher learning and which may comprise and embrace separate departments for literature, pedagogy, commerce, music, the various branches of science, the cultivation of the fine arts, and all other branches of professional or technical education which may be included within the purposes and objects of a college or university;” and “to prescribe the courses of study and employ professors, instructors and teachers.”

The University’s mission statement (without commentary), core values, philosophy statement, and “Vision of Our Catholic and Mercy Heritage” (“vision statement”)¹⁰ are laid out, among other places, on its public website, course catalog (2014-2015) for students, and faculty resources manual (revised 2014).

The University’s mission statement, displayed prominently in a number of locations on its public website and in the course catalog and faculty resources manual, declares, “Saint Xavier University, a Catholic institution inspired by the heritage of the Sisters of Mercy, educates men and women to search for truth, to think critically, to communicate effectively, and to serve wisely and compassionately in support of human dignity and the common good.” The University’s commentary of its mission statement, directly accessible from the University website homepage but not in its course catalog or faculty handbook, details each element. The commentary explains the “Catholic Institution” element as follows:

Saint Xavier University reflects and extends the teaching mission of Jesus. It is a ministry of the Roman Catholic Church, a relationship made possible because of its continuing sponsorship by the Sisters of Mercy through the Conference for Mercy Higher Education. Catholic teaching, especially the dialogue between faith and reason and the social justice tradition of the Church, undergirds the University’s mission and values.

The University’s core values emphasize a search for truth and knowledge, but contain no direct reference to the Sisters of Mercy, Catholicism, or Christianity. It does briefly mention “Catholic and Mercy character” and “experience God’s ... presence.”

¹⁰ The mission statement, core values, philosophy statement, and vision statement have not changed from 2011 to 2015.

The University's philosophy statement, which was adopted in 2006, speaks of the University's heritage as a Catholic institution and how these ideals are incorporated into its academic mission. It includes few references to religious faith when explaining its commitment to academic freedom.

The University's vision statement states, among other things, "the University encourages its community, especially its students, to become familiar with the richness of the Catholic intellectual tradition and the imperatives of Catholic social teaching. Respecting academic freedom, the University strives to be a place where the vigorous discussion of ideas can occur, especially as they relate to its mission as a Catholic university." It concludes, "To summarize, offering the opportunity for higher education within a Catholic and Mercy context, Saint Xavier University honors Jesus Christ whom it recognizes as 'the Way, the Truth, and the Life,'¹¹ the motto of the University inscribed on its coat of arms."

In order to be an accredited Catholic higher education institution, the University conducts a 10-year self-study that it submits to The Higher Learning Commission North Central Association of Colleges and Schools ("Commission"). The Commission uses the self-study as part of its evaluation when determining whether or not the University will receive continued accreditation. This is set forth in its own report listing challenges, concerns, and observations/suggestions for the University over the next 10 years. The University's most recent self-study report, *Mercy Mission Values Vision: Fulfilling the Promise*, consists of over 300 pages and issued around September 2007. The report begins with the mission statement, core values, philosophy statement, and vision statement. This report notes that one of the challenges from the Commission's 1997 report was Catholic identity. The 2007 report spends over 40 pages addressing Mission and Identity.

Vision 2017, the University's 5-year strategic plan available on its website, outlines six planning goals. One of the goals, "Preparing Students for the 21st Century," states that "The University will ensure and promote the integration of the University's educational Mission, Catholic identity and Mercy heritage throughout its curricular, cocurricular and extracurricular activities." Other planning goals, such as "Stewarding University Resources," "Increasing Visibility and Endowed Support," and "Strengthening Academic Programs and Support Services" do not mention the Sisters of Mercy, Catholicism, Christianity, God, or religion.

The University's Admission webpages for freshman and adult applicants contain no reference to the Sisters of Mercy, Catholicism, Christianity, God or Religion. The academic webpages for all academic Departments, with the exception of the Department of Religious Studies, also contain no reference to Sisters of Mercy, Catholicism, Christianity, God or religion. Similarly, biographical and career sketches for faculty, including adjuncts, found on the Meet Your Instructors and Meet Our Faculty and Staff webpages do not mention the Sisters of Mercy, Catholicism,¹² Christianity, God, or religion.

¹¹ A reference to the Bible verse John 4:16.

¹² One full-time faculty member is listed as attaining an LL.M. from the Catholic University of America focusing in National Security Law.

As indicated in the Regional Director's initial Decision and Direction of Election, the University hosts various public programs that are related to, or inspired by, its Catholic identity and Mercy heritage. These include the Catholic colloquium series, Squeaky Weal lecture series and God Matters radio show. In 2015, the Employer additionally cited its Pub Discourses, annual Interfaith Expo, along with non-public events such as alternative spring break, leadership retreat, and Mercy Scholars program.

The University holds three annual celebrations of its Catholic identity and Mercy heritage: Mercy Day on September 24th to celebrate the Feast of Our Lady of Mercy, Founders Day on December 3rd, which is the Peace of Saint Francis Xavier, and Mission Day in March, where a faculty member and student are honored for their service to the University community. Since the first hearing in 2011, the University began cancelling classes on Mercy Day to more easily allow for faculty, staff, and student participation. Mercy Day events include the Mass of the Holy Spirit, a special Eucharistic liturgy, and recognition of campus leaders among University sponsors, trustees, administrators, faculty, staff, students, and alumni. The University also closes on Christian holidays, including Holy Week.

All of the above celebrations, events, and programs are optional or voluntary for all faculty, including adjuncts, staff, and students. Some instructors may count attendance of students at such events towards requirements for courses they are teaching. For example, freshman students may attend one of the Catholic Colloquium series lectures to fulfill part of the requirements for their 1-credit transitions program.

New student induction takes place at the Medallion Ceremony, where incoming students are given a medallion with the University's motto and a prayer book. While the prayer book is primarily Catholic, it does feature several prayers based on other faiths such as Buddhism, Islam, Judaism, and tribal Native American religions.

As part of the University's core requirements, students must take two courses in religious studies. This is similar to the core credit requirements for other disciplines such as science, history, and arts and humanities. Students can fulfill this requirement by taking courses of any religion. It is not mandatory for students to take any courses in Catholicism or Christianity.

Sunday night Catholic liturgies and daily noontime masses are held on the University's Chicago campus, although neither students nor faculty, including adjuncts, are required to attend.

C. How the University holds out its adjunct faculty¹³

The University's articles of incorporation state:

No religious, racial, color or ethnic test or particular religious profession shall ever be held as a requisite for admission to said colleges or university or to any department

¹³ On December 24, 2009, in Case 13-RC-21897, the University and Petitioner signed a stipulated election agreement for the part-time faculty in a unit similar to the instant petitioned-for unit. An election was held via mail ballot and this Region certified the results on March 3, 2010 that a majority of valid votes had not been cast for the Petitioner.

belonging thereto ... or for election to any professorship, or any place of honor or emolument in ... any of its departments or institutions of learning.

In 2011, two then-current adjuncts and one then-recently retired adjunct testified to the hiring practices of the University. In 2015, an adjunct witness reiterated much of his same testimony from 2011. Adjuncts are typically recruited via electronic or newspaper announcements. The evidence from 2015 shows that the University posts for faculty positions, including adjunct openings, on its public website.¹⁴ The phrase, “Understanding of and appreciation for the Catholic identity and Mercy heritage of the University required” is found at the bottom of these online job advertisements.

Adjunct applicants submit their curriculum vitae or academic transcripts, sometimes along with an employment application,¹⁵ and then are interviewed in the hiring department by either full-time professors or the department chair. Interviewers do not inquire about the applicants’ religion and no preference is shown to applicants of a particular faith. The University’s Provost testified in 2015 that he instructs deans and department chairs to make sure adjunct candidates are “made aware of the mission identity issue and that they are able to support that in their teaching primarily.” An adjunct, in 2015, along with two adjuncts in 2011, testified that they were neither made aware of the mission identity nor asked to support the Catholic faith in their teaching. The University did not present any deans or department chairs as witnesses. No direct evidence was presented that adjunct applicants are told of any expectation to support the University’s Catholic identity and Mercy heritage.

When an applicant is selected to become an adjunct, the applicant may receive an oral or written offer of employment followed by a written contract. Neither the offer nor the contract reference the Sisters of Mercy, Catholicism, Christianity, God, or religion. The exception would be for those adjunct positions in the Department of Religious Studies¹⁶ when such references may be made as applicable to the courses to be taught. For example, an opening to teach a course on the Hindu tradition may contain a preference for expertise in Hindu theology while an opening to teach a Christian-based course may contain a preference for expertise in Christian theology.

Once hired, adjuncts are invited to attend an optional employee orientation. At the orientation in August 2014, Vice President of Mission and Ministry Graziano Marcheschi spoke about the University’s Catholic identity and how faith is incorporated into the educational mission of the University. Attendance at orientation is not mandatory and no evidence was presented on how many adjuncts attended.

¹⁴ The record contains evidence of third-party job postings; however, it is not known if the University creates, condones, or endorses these postings.

¹⁵ A separate Applicant Data Record contains questions about gender, birth, race, veteran and disability status but does not contain references to or questions about Sisters of Mercy, Catholicism, Christianity, God, or religion.

¹⁶ About two dozen adjuncts have taught in the Department of Religious Studies since 2010.

Unlike full-time and “portion of full-time” faculty,¹⁷ who receive a thorough third year review and are regularly evaluated by their department chair and dean, the performance of adjuncts is based primarily on student evaluations which contain no reference to the Sisters of Mercy, Catholicism, Christianity, God, or religion. Adjunct witnesses testified that they were never instructed to disseminate the Catholic faith, nor was any aspect of religion addressed in their evaluations. Neither the University nor the Church reviews or approves the texts chosen and used by faculty, including adjuncts, in the classroom

Testimony from adjuncts and administrators in 2011 indicated that adjuncts cannot be dismissed for conduct contrary to the Church, nor can they be dismissed by the Sisters of Mercy or Church officials. However, in 2015, there was testimony that there would be negative consequences for faculty, including adjuncts, who “demean” or “denigrate” the Catholic faith. Employer witnesses outlined how such an event might proceed wherein conversations would be held between the adjunct and the department chair, then dean, then provost. However, the record contains no evidence of such an event occurring or the resultant conversations. Testimony proceeded to suggest that the provost could then decide against giving the adjunct another contract with the University.¹⁸

The self-described guiding documents of Catholic education, *Ex Corde Ecclesiae* and the Application for the *Ex Corde* for the United States, encourage discussion of various faiths and viewpoints, including atheism. They also hold academic freedom to be an essential component of Catholic universities requiring, among other things, “freedom in research and teaching and respect for the principles and methods of each individual discipline.” The University has no requirement for faculty, including adjuncts, to emphasize or espouse Catholicism or Christianity in their teachings or imbue students with the tenets of the Catholic faith.

An expectation under *Ex Corde* is that faculty teaching Catholic theology receive a mandatum from the local ordinary of the Church. According to Sister Sanders in 2011, the two full-time Catholic Studies professors have each requested and received a mandatum. There is no evidence in the record that anyone from the petitioned-for unit teaches Catholic studies in 2015.

Examining the University’s 2007 self-study report for accreditation in relation to how it holds out its faculty, a section of the Introduction, “Mentoring for Mission and Heritage,” states that the University has a new initiative to mentor new faculty and staff on mission and heritage. The record from 2015 described the Office for Mission Integration and Mercy Heritage’s Mentoring for Mission program as offered to faculty, including adjuncts, and staff on alternating years. This program is voluntary and witness testimony was that one adjunct is currently enrolled in the program.

¹⁷ Pursuant to a petition and Board election, the Faculty Affairs Committee was certified as the collective-bargaining representative of all full-time and portion of full-time faculty in 1979 and has negotiated multiple collective-bargaining agreements with the University over more than the past three decades. I take administrative notice that no unfair labor practice charges have been filed against the University.

¹⁸ However, the Employer’s position has been that there is no expectancy of recall of adjuncts from semester to semester.

The University's 2007 self-study report for accreditation also states under "Student Learning and Effective Teaching," in the section of "Teaching Effectiveness":

The statement describing the University's Catholic identity in the Faculty Handbook highlights teaching and learning as "central activities" and teaching excellence as "paramount." The Faculty Handbook also explicitly states that "the most prized quality in members of the faculty is effective teaching."

Subsections on "Faculty Credentials," "Selection and Promotion of Faculty," "Curriculum Development," "Faculty Support and Development," and "Teaching Evaluation and Recognition" do not reference the Sisters of Mercy, Catholicism, Christianity, God, or religion. The self-study notes that curriculum evaluation and changes "do not include requirements that advocate explicit connections between the curriculum and the mission, Catholic social teaching, or its intellectual tradition."

The University's 5-year strategic plan, entitled Vision 2017, also addresses how it holds out its faculty. Faculty-related goals such as "Stewarding University Resources," discuss recruitment, evaluation, and retention of employees but make no mention of the Sisters of Mercy, Catholicism, Christianity, God, or religion. Similarly, the goal of "Developing Supportive Partnerships and Opportunities" describes the connections of academic programs to "local, national or international nonprofit, public, private or faithbased [sic] organization[s]" but makes no mention of the Sisters of Mercy, Catholicism, Christianity, or God.

The Faculty Resources manual is a 52-page manual that opens with the same mission statement (without commentary), core values, philosophy statement, and vision of Catholic and Mercy identity found on the University's website and contained in the 2014-2015 Course Catalog. There is also a recitation of the Mercy heritage. In subsequent sections related to Instructional Responsibilities, there are no references to the Sisters of Mercy, Catholicism, Christianity, God, or religion. To the extent that there is any further mention of these religious elements, there is a two-and-a-half page section devoted to the Office for University Mission and Ministry which explains the purpose of the Catholic university and the value of faith. Adjunct faculty do not receive a hardcopy of this document; rather, it is hyperlinked in the e-mail containing their employment contract.

IV. Analysis

At hearing, in its brief, and in its appeal to the Board, the Employer raised the single issue of the Board's jurisdiction. Specifically, it argues the University is a religious institution and should the Board exercise jurisdiction, it would violate the First Amendment to the United States Constitution and substantially burden the Employer's exercise of religion in violation of the Religious Freedom Restoration Act of 1993.¹⁹

¹⁹ The Employer raised the Religious Freedom Restoration Act issue in its post-hearing briefs. However, "the Board has no obligation to demonstrate the value of applying the Act to the Employer, unless and until the Employer demonstrates that such application constitutes a substantial burden." *Carroll College, Inc.*, 345 NLRB 254, 258 fn. 12 (2005), enf. denied on other grounds 558 F.3d 568 (D.C. Cir. 2009) and since "the Petitioner is not yet certified

A. Applicable legal standard for religious exemption

In *NLRB v. Catholic Bishop of Chicago*, the Supreme Court overturned the Board's policy to "to decline jurisdiction over religiously sponsored organizations 'only when they are completely religious, not just religiously associated.'" 440 U.S. 490, 492 (1979), quoting *Roman Catholic Archdiocese of Baltimore*, 216 NLRB 249, 250 (1975). Instead, the Court stated that the Act must be construed to exclude church-operated schools because to do otherwise "will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission." *Catholic Bishop*, 440 U.S. at 502. The Board's engagement in such inquiry would violate the First Amendment. *Ibid.* The Court posited that Board assertion of jurisdiction over church-operated schools would "'give rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid.'" *Ibid.*, quoting *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The "'admitted and obvious fact [is] that the raison d'être of parochial schools is the propagation of a religious faith.'" *Id.* at 503, quoting *Lemon*, 403 U.S. at 628 (Douglas, J., concurring).

In *Pacific Lutheran University*, the Board set forth a new standard in determining whether to assert jurisdiction over faculty members at self-identified religious colleges and universities. It adopted a new two-part standard. The Board will not decline to exercise jurisdiction over employees at a university that claims to be a religious institution unless the employer demonstrates that 1) it holds itself out as providing a religious educational environment, and 2) the employer holds the petitioned-for employees out as performing a specific role in creating or maintaining the university's religious educational environment. 361 NLRB No. 157, slip op. at 6-8.

The Board sets forth the threshold requirement that a university must hold itself out as providing a religious educational requirement. In so doing, it applies a test similar to that used by the D.C. Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335, 1343 (2002) and *Carroll College, Inc. v. NLRB*, 558 F.3d 568, 572 (2009). The Board applies a low threshold in determining whether or not there is even the potential to implicate First Amendment concerns of the bargaining unit. There is no need for an intrusive inquiry into the beliefs of a university but merely an examination of how it holds itself out to students, faculty, and the public. The first prong of the *Pacific Lutheran* standard matches the first two steps of the D.C. Circuit's tripartite test for exemption from Board jurisdiction, namely the institution holds itself out to students, faculty, and community as providing a religious educational environment and is organized as a nonprofit institution. *Id.*, slip op. at 7. See *Great Falls* and *Carroll College*, above. The Board finally does not adopt the requirement set forth in *Great Falls* and *Carroll College* that a university be "affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization ..." *Pacific Lutheran*, above, slip op. at 7.

In examining how an institution holds itself out, the Board will give more weight to contemporary self-presentation than to founding and historical documents. *Ibid.* Documents demonstrating this self-presentation would include "handbooks, mission statement, corporate documents, course catalogs, and documents published on a school's website." *Id.*, slip op. at 6.

as the faculty's collective-bargaining representative ... no specific religion-based conflicts have emerged." *Id.* at 259.

This showing is “minimal,” and “does not impose a heavy burden.” *Id.*, slip op. at 7. The first part of the *Pacific Lutheran* test, how the employer holds itself out, is a threshold showing.

Once a university satisfies the initial threshold requirement, the analysis turns to how an institution holds out the petitioned-for employees. Again, the focus is on how the institution *holds out* these employees, avoiding an intrusive inquiry into the nature of the religious tenets of the institution or how effective it is at inculcating them. *Id.*, slip op. at 8. The Board “requires that [petitioned-for employees] be held out as performing a *specific religious function*.” [Emphasis in original.] *Id.*, slip op. at 8. “[G]eneral or aspirational statements, without specificity as to how the requirement affects actual job functions, will not suffice.” *Id.*, slip op. at 9. When the Board applied its new standard to the facts of Pacific Lutheran University, it found the statement in the faculty constitution that members “become a member of a community of scholars who respect and uphold the principles of Lutheran Higher Education ...” *Id.*, slip op. at 12 fn. 22, to be aspirational as it did not implicate actual job functions.

Conversely, evidence showing that faculty members are required to integrate the institution’s religious tenets into coursework, serve as religious advisors to students, propagate those tenets, engage in religious training, or conform to the tenets in a manner specifically linked to their job duties is sufficient to exempt an institution from Board jurisdiction. *Id.*, slip op. at 9. Such evidence will be found in the school’s statements to students, faculty, and the public, including on its website and in its handbooks, employment contracts, and job descriptions. *Id.*, slip op. at 10. Succinctly put, “whether a reasonable prospective applicant would conclude that performance of their faculty responsibilities would require furtherance of the college or university’s religious mission.” *Id.*, slip op. at 9.

B. Employer holds itself out as providing a religious educational environment

The University consistently identifies itself as a Catholic institution and publicly describes those values as inspiring the education it provides. As set forth in the Regional Director’s initial Decision and Direction of Election, the University produces many publicly available programs and publications that prominently feature Catholic and Mercy themes. This includes content on its website, registration as a Catholic university, and Catholic and Christian iconography in many of its classrooms. The University is organized as a nonprofit institution. Based on the evidence, the University holds itself out as providing a religious educational environment and thereby meets the threshold requirement established in the *Pacific Lutheran* standard.

C. Employer does not hold out petitioned-for adjunct faculty as performing a specific religious function

At hearing, the Employer focused on the idea that *all* faculty, including adjuncts, are expected to support the University’s religious mission and identity. It cited adjunct job advertisements on its website (“Understanding of and appreciation for the Catholic identity and Mercy heritage of the University required.”) and the Application for the *Ex Corde* in the U.S. (“All professors are expected to be aware of and committed to the Catholic mission and identity of their institutions.”). However, these are the sort of generalized statements that the Board in *Pacific Lutheran* found insufficient.

In support of its position, the Employer emphasized the programming of its Office for University Mission and Ministry such as alternative spring break opportunities, radio shows, lecture and discussion series, leadership retreats, and Mentoring for Mission program.²⁰ It is undisputed that all of these events and programs are entirely optional or voluntary for the adjunct faculty. Adjuncts are not required to use the Office's services or participate in its programs, and there is no evidence that the Employer knows or tracks the participation of adjuncts in these programs. The record revealed only a single adjunct in the Mentoring for Mission program.

Both parties' witnesses corroborated the Employer does not discriminate in hiring, promotion, or termination based on religion or religious profession as stated in the articles of incorporation.

No employment applications or any of the job postings in the record include any statements that adjuncts must integrate the Church's or the Sisters of Mercy's tenets into coursework, serve as religious advisors to students, propagate the tenets of the Sisters of Mercy, engage in religious training, or conform to the tenets of Catholicism in the course of their job duties. While the Employer posited there was an expectation that adjuncts support the University's Catholic mission, it acknowledged that all religious programming and events, even adjunct orientation, are optional. Adjunct witnesses testified that during the hiring process, including the interview, and after, they have never been informed that they must adhere to or propagate any Catholic doctrine as part of their jobs.

The handbook for faculty and adjuncts, entitled Faculty Resources Manual, contains the aspirational mission and vision statements, but does not mention the Sisters of Mercy, Catholicism, Christianity, God, or even religion in relation to adjunct or full-time faculty duties. The evidence fails to show that adjuncts are expected to serve as religious advisors to students, propagate the tenets of the Sisters of Mercy, engage in religious training, or conform to the tenets of Catholicism in the course of their job duties.

The record does not show that the Employer monitors adjuncts to know if they receive any messages regarding the University's Catholic mission. It is also devoid of any action resulting from an adjunct's failure to understand, appreciate, support, or be committed to the University's Catholic mission.

The Employer's most recent statement for accreditation to the commission, its 2007 self-study report, does not mention the Sisters of Mercy, Catholicism, Christianity, God, or religion in the subsections pertaining to faculty—"Faculty Credentials," "Selection and Promotion of Faculty," "Curriculum Development," "Faculty Support and Development," and "Teaching Evaluation and Recognition." Based on the way the University holds its faculty out to prospective faculty, students and the community, a reasonable candidate for an adjunct position at Saint Xavier University would not conclude that performance of their job responsibilities requires furtherance of a religious mission.

²⁰ In its most recent self-study for accreditation to the Commission, the Employer mentioned without elaboration "mentoring new faculty and staff on mission and heritage."

The Employer contends adjuncts teaching in its Department of Religious Studies should be excluded from the bargaining unit. However, there is nothing in the record to suggest that adjuncts teaching religious studies courses must espouse Catholicism, Christianity, or any particular religion. The one adjunct job posting in the Department of Religious Studies introduced as evidence merely listed a *preference* for expertise in Christian theology or Christian history. It did not require expertise in Christianity nor did it mention inculcating students in Catholicism. The Employer also cited the religious requirements in place for instructors of Catholic studies courses. Although students are not required to take any Catholic-specific courses to graduate, instructors who teach these classes must receive a mandatum from the Bishop of Chicago. As described by University President Wiseman in 2011, a mandatum “says that they have to faithfully teach the Catholic tradition in their classes.” This is specific to the particularized coursework being taught and, on its face, is no different than a mathematics instructor being required to teach calculus accurately. I therefore conclude that the Employer does not hold out adjuncts in the Department of Religious Studies, including those teaching Catholic studies courses, as performing a specific religious function.

The Employer also argued for the exclusion of adjuncts teaching courses in the Pastoral Ministry Institute. The Institute’s webpage and the 2014-2015 Undergraduate Course Catalog describe the Institute as serving the Archdiocese of Chicago and providing “responsive ministerial preparation of lay ecclesial ministers, deacon couples and vowed religious leaders.” Further, the University’s Course Catalog shows course offerings specifically tailored for the Catholic ministry and ministerial training. The record evidence points to these specific adjuncts’ coursework as inextricably linked with the University’s religious mission. I therefore conclude that the University holds out adjuncts while teaching courses offered by the Pastoral Ministry Institute as performing a specific religious function. However, the record reflects that no adjunct taught a course in the Pastoral Ministry Institute during the time the original election was held.

For these reasons, I find that the Employer has not met its burden of establishing that its faculty, including adjuncts, other than adjuncts while teaching coursework in the Pastoral Ministry Institute, serve a specific role in creating or maintaining the University’s religious educational environment. Therefore, the Board exercises jurisdiction over the Employer.

V. Conclusion

Based on the foregoing and the entire record herein, I find it is appropriate to assert jurisdiction in the following unit appropriate for the purpose of collective-bargaining:

All part-time faculty employed by the Employer at its campuses presently located at 3700 West 103rd Street, Chicago, Illinois and 18230 Orland Parkway, Orland Park, Illinois, who teach at least three credit hours per semester; but, excluding all part-time faculty while teaching coursework in the Pastoral Ministry Institute and members in the School of Nursing, all music tutors, all student supervisors in the School of Education, independent contractors, confidential employees and managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

VI. Order

IT IS HEREBY ORDERED that the ballots previously impounded in this matter be counted, a tally of ballots prepared, and an appropriate certification issue at the conclusion of the proceedings.

VII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D. C. 20570-0001. This request must be received by the Board in Washington by **June 15, 2015**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so.

Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E- filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 1th day of June, 2015.

/s/ *Peter Sung Ohr*

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
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Chicago, Illinois 60604-1443